Ontario
Municipal
Board

85th ANNUAL REPORT

April 1, 1990 to March 31, 1991

John P. Kruger
Chairman

B. Cindy Alty
Assistant Board Secretary
and Manager, Finance and
Administration

92-01311/

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Vous pouvez obtenir le présent
document en vous addressant au:

Bureau des Renseignements
Commission des affaires municipale de l'Ontario
180 rue Dundas Ouest
Toronto, Ontario
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Ontario

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180 Dundas St. West
Toronto, Ontario
M5G 1E5

June 28, 1991

The Honourable Howard Hampton
Attorney General
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, Ontario

Dear Sir:

We are pleased to submit to you, as required by Section 100 of the Ontario Municipal Board Act, the Annual Report of the Board for the 1990-91 fiscal year.

A copy of the Annual Report is being sent to each municipality in Ontario as well as to other organizations which deal on a regular basis with matters before the Board. It will also be made available, on request, to libraries, school boards and universities. It is available in English and French.

John P. Kruger
Chairman

B. Cindy Alty
Assistant Board Secretary and Manager, Finance and Administration

JURISDICTION AND RESPONSIBILITY

The Ontario Municipal Board Act, enacted in 1932, created the Board as an independent administrative tribunal. That Act repealed the Ontario Railway and Municipal Board Act enacted in 1906 and the Bureau of Municipal Affairs Act, enacted in 1917, and incorporated many of the provisions and powers of those Acts. Most of the powers bestowed upon the Board in 1932 have been retained to this date.

The Ontario Municipal Board functions to determine applications, referrals and appeals made under the provisions of various statutes, most notably the Planning, Municipal, Expropriations, Assessment and Consolidated Hearings Acts. A list of some of the statutes which confer jurisdiction or authority on the Board is given in Chart A. Board Members travel extensively throughout the province to conduct hearings and adjudicate in these matters.

MEMBERS OF THE BOARD

As of March 31, 1991, there were 30 Members of the Board, including the Chairman and six Vice-Chairpersons. Members of the Board during the 1990-1991 fiscal year are listed on Chart B. Each is appointed by the Lieutenant-Governor-in-Council and serves on a full-time basis. The head office of the Board is located in the City of Toronto but some members live in areas outside of Metropolitan Toronto.

The membership of the Board reflects a variety of professions:— accountants, engineers, architects, planners, municipal administrators and lawyers. However, approximately half of the Members are lawyers.

The Board wishes to acknowledge the significant contribution of Klaus D. Bindhardt who retired December 31, 1990. Mr. Bindhardt, an architect, was a Member of the Board for 14 years.

On April 2, 1990, the Board welcomed as a Member, J. Anna Fraser. During her years in private practise, Ms. Fraser, a lawyer and a planner, specialized in municipal and assessment law.

In keeping with the objective to better reflect the cultural and ethnic mosaic of Ontario, the Board is actively recruiting from the employment equity target groups.

CONSULTANTS' STUDY

In August of 1990, Coopers and Lybrand was engaged under a competitive bid to prepare a comprehensive report on the Board's operations. The consultants made recommendations which stressed the need to increase staff complement in the areas of operational support for the planning and processing divisions, more legal support within the staff structure, as well as support for Members. The consultants were critical of the case management system, the lack of staff in some areas and emphasized the need to improve the Board's computer support systems as well as office technologies.

As a result, the Board requested funding from the Government for a phased implementation of the consultants' report. Unfortunately, due to general constraints, funds have not been provided to permit the desired level of service. Therefore, needed improvements on the scale recommended by both the Board and the consultants are not possible at this time and only incremental improvements can be implemented.

In this regard, an attempt is being made to streamline the rules, procedures and administration of the Board's activities. While this will not materially decrease the existing 13-month wait for a hearing, the objective is to contain the growth in the backlog by doing what is possible in an innovative way with the tools available to the Board.

CONSULTANTS *(continued)*

Wide consultation is an important part of this process. The Board will be undertaking a consultative process with its clients, including members of the municipal bar, Association of Municipalities of Ontario and other similar municipal organizations, as well as selected advocacy groups who regularly appear before the Board. The Board has also conferred with Ministries such as Environment, Municipal Affairs and Natural Resources and also consults regularly with the Environmental Assessment Board as the Members of the two Boards frequently sit as a joint board.

ADMINISTRATION OF THE BOARD

In order to fulfill its mandate and achieve an acceptable level of service delivery in accordance with the priorities and goals of the Government, the Ontario Municipal Board must address its case backlog. The development of new policies and procedures in support of a case management system are underway. The Board is also expanding its policy and research capabilities.

The Board's employee complement of 54 remained unchanged.

In August 1990, James G. Malcolm, Secretary and Chief Adminstrative Officer since February 1986, accepted a new position with the Ministry of Financial Institutions, Ontario Insurance Commission, where he is the Executive Co-ordinator/Registrar.

During the year, James Irvine, formerly Executive Assistant to the Deputy Attorney General, was seconded to assist the Board with the implementation of the initiatives outlined above.

In April 1990, the Board retained Gillian Burton as general legal counsel to assist with the legal aspects of its administrative responsibilities. Duties involve advising on legal issues, assisting at prehearing conferences, legal research and the development of revisions to the Board's rules and procedures, which might be acceptable to the Board.

It deserves note that the average hearing time for appeals is increasing and hearings are becoming more complex. The declared provincial interest and policy statement provisions now contained in the Planning Act generate public awareness and generally increase the contentiousness of hearings requiring more hearing days to be set aside and more than one Member scheduled to hear the matter.

As will be seen from an analysis of the workload data included in this report, the level of appeal applications remains relatively constant despite the fact the Board is scheduling and holding more hearings than in the previous period.

The increase in affordable housing applications as well as those of group homes not only strains the Board's resources, but increases the sensitive nature of the evidence upon which the Board must adjudicate in the communities affected. Public interest groups ratepayer groups and private citizens are becoming more and more attuned to the significance of certain Board hearings and the expanding awareness and participation of these groups often results in protracted hearings. In particular, although the Board has long addressed these issues in its deliberations, environmental, transportation, affordable housing and waste disposal matters are gaining greater public attention, resulting in more appearances by interest groups and extended hearing times. This emerging public awareness, combined with no increase in Board membership will further influence the Board's backlog problems.

The Organization Chart of the Board is given in Chart C.

INFORMATION OFFICE

Assistance or information may be obtained from the Board's Information Office.

Staff are well informed and can give prompt, thorough answers to queries in both French and English. Some examples of inquiries received from the public, whether by telephone, across the counter, or in writing, include:

- appeal procedures
- application fees
- hearing dates
- status of applications
- requests to view files and exhibits, copies of Board decisions and orders and release of exhibits

In addition to being a key source of information, this office provides a coin-operated photocopier, carrels equipped with electrical outlets, guides, publications and brochures.

DEVELOPMENT CHARGES ACT

The Development Charges Act permits municipalities and school boards to impose development charges on all types of development that will increase the need for municipal services or school facilities. It not only addresses the need for hard services, but also provides for off-site soft services such as added police and fire protection.

The provisions of the Development Charges Act require municipalities to bring their lot levy policies into conformity with the requirements of the Act by November 23, 1991. The legislation provides for several types of appeals to the Ontario Municipal Board by those on whom these levies have been imposed.

As of March 31, 1991, the Board received appeals filed under the provisions of subsection 4(4) of the Act with respect to development charge by-laws enacted by four municipalities. It also received an appeal pursuant to subsection 8(6) of the Act with respect to one of these by-laws.

To this date, very few municipalities have passed the appropriate by-law and the real impact of the appeal workload from this source has not yet been felt.

COMBINED DECISION AND ORDER

As anticipated in the 84th Annual Report, the Board has now adopted the practice, wherever possible, of issuing one document comprising the Decision and Order of the Board. This procedure has been in effect since August of 1990 and has resulted in a saving of time and effort on behalf of the Board's staff in that it eliminates the preparation and issue of a second document on most of our hearing files.

While some decisions still issue with directions requiring the fulfilment of conditions or the submission of further documents prior to order issue, the majority of our hearing files can be closed on issue of a combined Decision and Order of the Board. An exception is the approval of draft plans of subdivision. Here, as in the past, the order does not issue until all conditions imposed have been cleared. The Board's order of approval issues upon submission of the final plan.

PRACTICE DIRECTION

The Board expanded the use of its Practice Direction. This is issued along with the Appointment for Hearing on those hearings anticipated to be lengthy or complex. The Practice Direction requires those parties who intend to call expert witnesses to file with all known parties and with the Board, a report or memorandum which sets out the witnesses' qualifications and the substance of the evidence proposed to be given. These materials are required to be filed ten days prior to the scheduled start of the hearing.

PREHEARING CONFERENCES

The Board is increasingly holding prehearing conferences in advance of the full hearing of matters expected to be both complex and lengthy. The prehearing procedure affords the Board the opportunity to identify the parties and participants, and the degree to which they wish to participate, as well as to provide for the identification of issues to be addressed at the hearing. The Board is then in a position to establish rules for the prefiling of documents and to set out the order of presentation of evidence. The prehearing process permits participants to have a better understanding of the issues to be raised or addressed by others, and has proven to be of assistance to all participants in the organization of the hearing agenda.

THE FUTURE

The Board is determined to do all in its power to reduce the level of the backlog. Appeal activity is generally one year following the onset of a recession and, in theory, we should now be seeing a decrease in Members' workload. The fact that this is not happening is due to three factors: consent and variance applications remain strong, joint board matters and official plan amendments are becoming more complex and more hearings are requiring at least two-Member panels.

This, combined with the imminent retirement of several long-serving Members, fiscal constraints, and the need to revise practices and procedures, represents an on-going and significant challenge.

WORKLOAD

TYPE OF APPLICATION, APPEAL OR REFERRAL RECEIVED BY THE O.M.B.	1990-91	1989-90	1988-89
1. Assessment Appeals	719	731	886
2. Capital Expenditures of Municipalities and School Boards	1521	1474	1541
3. Zoning By-law Appeals/Approvals	694	749	761
4. Appeals from Council's Refusal to Amend Zoning By-laws	287	270	257
5. Minor Variance Appeals	842	883	820
6. Consent Appeals	1080	1157	848
7. Official Plans	184	207	242
8. Plans of Subdivision	75	80	87
9. Miscellaneous	135	158	140
10. Land Compensation	53	31	37
11. Consolidated Hearings	10	15	17
TOTAL	5600	5755	5636

HEARINGS

The Hearings Division scheduled 2593 hearings involving 4091 files during the 1990-1991 fiscal year.

The number of actual hearings held was 1962 involving 3146 files. The following chart provides information on the type of hearings over the last two fiscal years:

	HEARINGS SCHEDULED		HEARINGS HELD		NUMBER OF FILES SCHEDULED		HEARD	
	1989-90	1990-91	1989-90	1990-91	1989-90	1990-91	1989-90	1990-91
Planning & Municipal	1988	2036	1557	1574	3016	3141	2404	2473
Assessment Appeals	510	506	330	358	842	896	542	642
Land Compensation	32	37	15	20	42	39	15	20
Consolidated Hearings	12	14	10	10	15	15	13	11
TOTAL	2552	2593	1912	1962	3915	4091	2974	3146

It should be noted that the difference between 2593 hearings scheduled and the 1962 actually held, represents 631 adjournments and withdrawals. If the Board is advised of an adjournment or withdrawal less than 30 days before the start of the hearing, it is possible the Board will not be able to schedule another hearing in time to utilize that Member. As a result, the Board requests that all adjournments or withdrawals be communicated to the Board's Hearings Division as soon as possible prior to the hearing.

FINANCIAL SUMMARY

REVENUE:

The Board has adopted, under section 99 of the Ontario Municipal Board Act, a tariff which establishes a filing fee in connection with each application, appeal or referral. Revenues collected under section 98 of the Act are reported as Miscellaneous. They include subscriptions to Ontario Municipal Board decisions, publications and photocopying charges. The fees collected by the Board are paid to the Treasurer of Ontario.

Application, Appeal or Referral Type	1989-90 Fees Collected	1990-91 Fees Collected
Capital Expenditures	$ 636,822.50	$ 609,115.75
Planning Act Matters	$ 413,575.00	$ 391,725.00
Asessment Appeals	$ 137,530.00	$ 126,970.00
Miscellaneous	$ 28,601.55	$ 29,468.64
TOTAL	$ 1,216,529.05	$ 1,157,279.39

EXPENDITURE:

The budget of the Ontario Municipal Board is provided within the estimates of the Ministry of the Attorney General on a fiscal year basis.

Account Item	1988-89	1990-91
Salary & Wages	$ 4,316,000.00	$ 4,569,900.00
Employee Benefits	$ 650,500.00	$ 830,200.00
Transportation & Communications	$ 472,200.00	$ 431,500.00
Services	$ 201,000.00	$ 205,700.00
Supplies & Equipment	$ 97,200.00	$ 164,300.00
Transfer Payments	$ 10,000.00	$ 10,000.00
TOTAL EXPENDITURES	$ 5,746,900.00	$ 6,211,600.00

CHART A

STATUTES FROM WHICH THE ONTARIO MUNICIPAL BOARD DERIVES JURISDICTION AND AUTHORITY

Aggregate Resources Act
Assessment Act
Barrie-Innisfil Annexation Act, 1981
Barrie-Vespra Annexation Act, 1984
Beach Protection Act
Cemeteries Act
Commercial Concentration Tax Act
Conservation Authorities Act
Consolidated Hearings Act
County of Oxford Act
Development Charges Act
District Municipality of Muskoka Act
District Welfare Administration Boards Act
Education Act
Environmental Assessment Act
Evidence Act
Expropriations Act
Haliburton Act
Homes for the Aged and Rest Homes Act
Housing Development Act
Legal Aid Act
Legislative Assembly Act
Liquor Licence Act
Local Improvement Act
Mining Tax Act
Moosonee Development Area Board Act
Municipal Act
Municipal Affairs Act
Municipal Boundary Negotiations Act, 1981
Municipal Corporations Quieting Orders Act
Municipal Elections Act
Municipal Franchises Act
Municipal Tax Assistance Act
Municipality of Metropolitan Toronto Act
Niagara Escarpment Planning and Development Act
Ontario Education Capital Aid Corporation Act
Ontario Heritage Act
Ontario Highway Transport Board Act
Ontario Municipal Board Act
Ontario Municipal Improvement Corporation Act
Ontario Northland Transportation Commission Act
Ontario Planning and Development Act
Ontario Universities Capital Aid Corporation Act
Ontario Water Resourses Act
Ontario Telephone Development Corporation Act
Planning Act
Power Corporation Act
Public Commerical Vehicles Act
Public Libraries Act
Public Service Works on Highway Act
Public Transportation and Highway Improvement Act
Public Utilities Act
Railways Act
Regional Municipality of Durham Act
Regional Municipality of Haldimand-Norfolk Act
Regional Municipality of Halton Act
Regional Municipality of Hamilton-Wentworth Act
Regional Municipality of Niagara Act
Regional Municipality of Ottawa-Carleton Act
Regional Municipality of Peel Act
Regional Municipality of Sudbury Act
Regional Municipality of Waterloo Act
Regional Municipality of York Act
Registry Act
Regulations Act
Rental Housing Protection Act, 1986
St. Lawrence Parks Commission Act
Shoreline Property Assistance Act
Telephone Act
Territorial Division Act
Tile Drainage Act
Trees Act
Trustee Act

Note: In addition to this list (which may not be complete), there are in excess of 100 private Acts for individual municipalities which confer specific jurisdiction and authority on the Board.

CHART B

MEMBERS OF THE ONTARIO MUNICIPAL BOARD
1990-91

Members	Date of Appointment
John P. Kruger Chairman	March 19, 1990
D.S. Colbourne Vice-Chairman	September 3, 1968 June 1, 1977
H.H. Lancaster, Q.C. Vice-Chairman	September 7, 1970 June 30, 1981
D.H. McRobb Vice-Chairman	January 3, 1978 October 22, 1982
T.F. Baines, Q.C. Vice-Chairman	March 17, 1980 October 5, 1989
A.J.L. Chapman, Q.C. Vice-Chairman	September 30, 1974 October 5, 1989
P.G. Wilkes Vice-Chairman	January 16, 1978 October 5, 1989
A. B. Ball	January 1, 1974
J.A. Wheler, Q.C.	September 3, 1974
K.D. Bindhardt	January 2, 1976 Retired December 31, 1990
D.L. Santo	March 10, 1980
S.R. Cole	October 8, 1981
D.W. Middleton	October 8, 1981
J.R. Mills	May 10, 1982
P.H. Howden, Q.C.	July 19, 1982
G.A. Harron	December 1, 1982
M.A. Rosenberg, Q.C.	January 3, 1983
R.D.M. Owen	January 4, 1983
R.W. Rodman	March 14, 1983
G.I. Thomson, Q.C.	May 2, 1983
Brian W. McLoughlin	January 1, 1984
M.E. Johnson	July 12, 1988
S.W. Lee	July 1, 1988
J.R. Tomlinson	September 6, 1988
A. Delfino	January 3, 1989
C. Millar	May 15, 1989
Ted Yao	July 3, 1989
N. Katary	August 1, 1989
W.R.F. Watty	August 1, 1989
R. Eisen, Q.C.	January 16, 1990
J. Anna Fraser	April 2, 1990

CHART C

ORGANIZATION CHART OF THE ONTARIO MUNICIPAL BOARD